SUPREME COURT OF THE UNITED STATES.

No. 2.

JOHN GOSZLER, PLAINTIFF IN ERROR,

VERSUS

THE UNION BANK OF GEORGETOWN.

IN ERROR TO THE CIRCUIT COURT U. S. FOR THE COUNTY OF WASHINGTON, D. C.

INDEX.

	Original.	Print.
Petition of John Goszler to Chief Justice for writ of error, &c.	1	1
Allowance of writ of error to the petitioner by Mr. Chief Justice Marshall	9	3
Title, capias ad resp.	13	4
Declaration	14	4
Marshal's return on ca. ad resp.	16	5
Plea of non assumpsit,—issue joined	17	6
Jury empannelled,—verdict for plaintiffs	18	6
Statement of the parties for the opinion of the court, subject to which the verdict was taken,—a case stated	19	7
Opinion of the court on said statement for plaintiffs	24	9
Judgment	24	9
Exhibit A, referred to in the statement	25	10
Certificate of clerk	26	11
Copy of petition	27	11
Copy of order	30	12
Writ of error	31	13
Return of clerk	32	13

To the Chief Justice and Associate Justices of the Supreme Court of the United States, or to any one of them:

The petition of John Goszler humbly shows, that, at a session of the circuit court of the District of Columbia, lately held for the county of Washington, on the first Monday of October last, the President and Directors of the Union Bank of Georgetown recovered a judgment against your peti-

tioner for the sum of 725 dollars. with interest from the 24th October, 1820, till paid, and the costs of suit, as appears by the record of the said judgment, and the process thereof—a copy of which is hereto annexed. That the said suit was brought upon the joint and several promissory note of your petitioner, of one Vincent King and one William Morgan, dated August 22, 1820, for $725, payable 60 days after date to the said president and directors or order; that the said note was one of a series and succession of notes, commonly called accommodation notes, which had been drawn, from time to time, in order to procure and continue to the said Vincent King (for whom your petitioner and William Morgan signed as sureties) an accommodation, by way of discount or loan from the said Bank, commencing in March, 1818, and continued from that time to the date of the note in suit—a period of about two years and five months. That the said notes were renewed, during that period, once in every 63 days, allowing the 60 days at which they purported to be payable, and three days of grace; and at every renewal, except three, interest on the amount of each note, at the rate of six *per centum per annum*, for the space of 64 days, was discounted and deducted from the amount of each note, in the first instance, on the day of its date and of its being discounted. That each renewed note drawn to replace the preceding note was dated and discounted on the last day of grace of its immediate predecessor, was made payable at 60 days thereafter, and became due and demandable in bank on the 63d day thereafter: and the same rate of interest, calculated for the same space of time, had also, in the first instance, been discounted and deducted from the amount of the *original note* when it was first discounted. That the said original note, as well as every succeeding note of the same series, was replaced on the day it fell due, that is, on the last day of grace, by a note at 60 days, dated and actually discounted on that day; and the nett proceed of the same, after deducting the interest and discount as aforesaid, was on the same day passed to the credit of said King in account; which credit was countervailed by charging him in the same account, and at the same time, with the next preceding note due on that day: from which your petitioner and his counsel conceived it to be clearly made out that the said bank had gained two days', or at least one day's interest, at every successive renewal of each note, and twelve days', or at least six days' interest in each year, over and above the legal rate of interest: and accordingly, these facts being all stated in a case agreed, your petitioner, as advised by learned counsel, took defence upon the statute of usury: but the court overruled his said defence, upon the ground of some distinction between the legal effect of a *loan* and a *discount*. All which further appears by the said record. And your petitioner further shows, that the said decision of the circuit court involves questions of law of such extensive interest and operation, as to render the final decision of them in the Supreme Court desirable to the whole community—not only to the numerous class of persons who either obtain accommodations for themselves, or lend their names to their friends, but to the banks and the numerous share-holders in the same: in short, that the question is of vital interest and importance to the whole system of commercial and bank finance in the country, and has so been viewed and treated by the great community of banks, including the Bank of the United States, who have retained a numerous and powerful bar of counsel, to be in readiness to meet the question when and wheresoever it may arise.

And your petitioner, by way of assignment of errors in the judgment and proceeding aforesaid, shows that the accommodation accorded by the said Bank to the said King, by way of a discount upon accommodation notes, successively renewed and continued as aforesaid, was essentially a *loan;* and the interest discounted and deducted from the amount of each note, as aforesaid, was, in the nature of interest, reserved and taken for the *loan* of money: there being no solid or legal ground for the distinction, relied upon by the circuit court, between such a transaction as that in question and a *loan*; further, that each successive renewal and discount of the said notes, for the purpose of continuing the said accommodation to the said King, was essentially a *forbearance* or giving day of payment of a debt; and the interest so discounted and deducted from each note as aforesaid, was, in the nature of interest, reserved and taken for such forbearance and giving day of payment: and, inasmuch as the interest, so reserved and taken, exceeds the legal rate of interest, that the transaction falls under both of the aforementioned predicaments of the statute against usury; and, therefore, that the circuit court erred in giving judgment for the plaintiffs upon the case stated in the said record, but should have given judgment thereupon for the defendant.

Wherefore, your petitioner prays that an order may be directed to the clerk of the said circuit court for the issuing of a writ of error in the said case, pursuant to the provisions of the act of Congress, passed April 2, 1816, for limiting the right of appeal from the said circuit court.

All which is humbly and respectfully submitted, &c. &c.

W. JONES, *for petitioner.*

To the clerk of the circuit court of the District of Columbia for the county of Washington:

Whereas John Goszler, by his petition to the Chief Justice and Associate Justices of the Supreme Court of the United States, hath assigned errors in a certain judgment recovered in the said circuit court, by the President and Directors of the Union Bank of Georgetown, against the said petitioner; the record and process of which judgment is annexed to the said petition: and whereas it appears to me that such errors involve questions of law of such extensive interest and operation as to render the final decision of them by the Supreme Court desirable: now you are hereby required and directed to issue a writ of error in the said case, in the usual form, upon the said petitioner's filing in your office a bond in the penalty of fifteen hundred dollars, with a condition in the usual form, and security to be approved by one of the Judges of the said circuit court, or by one of the Justices of this court.

Given under my hand, this twentieth day of February, 1823.

J. MARSHALL,
Chief Justice U. S.

DISTRICT OF COLUMBIA, set.

At a circuit court of the District of Columbia, begun and held in and for the county of Washington, at the city of Washington, on the first Monday of October, being the seventh day of the same month, in the year of our Lord one thousand eight hundred and twenty-two, and of American independence the forty-seventh—

Present,

The Hon. WILLIAM CRANCH, Esq., *Chief Judge,*
BUCKNER THRUSTON, and JAMES S. MORSELL, Esqs. } *Assistant Judges.*
TENCH RINGGOLD, Esq., *Marshal.*
WILLIAM BRENT, *Clerk.*

In the record and proceedings of the same court, among others, are the following, to wit:

THE PRESIDENT AND DIRECTORS OF THE UNION BANK OF GEORGETOWN, *against* JOHN GOSZLER.

Be it remembered, that heretofore, to wit, on the twenty-first day of December, in the year one thousand eight hundred and twenty, the said President and Directors, by Francis S. Key and James Dunlop, Esquires, prosecuted and sued forth out of the circuit court here, the United States' writ of capias ad respondendum, directed to the Marshal of the district aforesaid, in the words and of the tenor following, to wit:

DISTRICT OF COLUMBIA, to wit.—*The United States of America to the Marshal of the District of Columbia, greeting:*

We command you that you take John Goszler, late of Washington county, if he shall be found within the county of Washington, in your said district, and him safely keep, so that you have his body before the circuit court of the District of Columbia, to be held for the county aforesaid, at the city of Washington, on the fourth Monday of December next, to answer unto the President and Directors of the Union Bank of Georgetown in a plea of trespass on the case, and so forth. Hereof fail not at your peril, and have you then and there this writ.

Witness, William Cranch, Esquire, Chief Judge of our said court, at the city of Washington, the thirty-first day of October, Anno Domini one thousand eight hundred and twenty.

"Issued the 21st day of December, 1820. (K. and D.)

WM. BRENT, *Clerk.*

And the aforesaid bank, by its attorneys aforesaid, on the day of prosecuting and suing forth of the aforesaid writ, in form aforesaid, declared against the said John, in the plea aforesaid, in form following, to wit:

DISTRICT OF COLUMBIA, *Washington County,* } to wit.

John Goszler, late of Washington county, was attached to answer unto the President and Directors of the Union Bank of Georgetown, in a plea of trespass on the case, and so forth. And whereupon the said plaintiffs, by Key and Dunlop, their attorneys, complain, that, whereas heretofore, to wit, on the twenty-second day of August, in the year of our Lord eighteen hundred and twenty, at the county aforesaid, the said John, the defendant, made his certain note in writing, commonly called a promissory note, his own proper handwriting being thereunto subscribed, bearing date the day

and year aforesaid, and thereby, sixty days after the date thereof, promised to pay to the plaintiffs, by the name of the President and Directors of the Union Bank of Georgetown, or order, the full and just sum of seven hundred and twenty-five dollars, current money of the United States, for value received, at their bank, and then and there delivered the said note to the said plaintiffs.

By reason whereof, and by force of the statute in such case made and provided, the said defendant became liable to pay the said sum of money in the said note mentioned to the said plaintiffs, according to the tenor and effect of the same; and being so liable, in consideration thereof, then and there undertook, and promised to pay the same to the said plaintiffs, according to the tenor and effect thereof, whenever afterwards he should be thereto requested.

And whereas the said defendant, afterwards, to wit, on the same day and year aforesaid, at the county aforesaid, was indebted unto the said plaintiff in another sum of seven hundred and twenty-five dollars, like money, for the like sum of money by the said plaintiffs, to and for the use of the said defendant, before that time paid, laid out, and expended, at the special instance and request of the said defendant, and for other money by the said plaintiffs before that time lent and advanced to said defendant at his special instance and request; and for other money by the said defendant before that time had and received, to the use of the said plaintiffs; and being so indebted, the said defendant, in consideration thereof, afterwards, to wit, at the same day and year aforesaid, at the county aforesaid, undertook and promised the said plaintiffs to pay them the said last mentioned sum of money, when afterwards he should be thereunto required.

Yet the said defendant the said several sums of money herein mentioned, or any part thereof, (although often thereunto requested, to wit, on the day and year aforesaid, at the county aforesaid, and often afterwards,) hath not paid, but the same, or any part thereof, to pay, has hitherto wholly refused, and still does refuse, to the damage of the said plaintiffs in the sum of fourteen hundred dollars, current money, and therefore they bring suit, and so forth.

KEY & DUNLOP, *for the plaintiffs.*

Pledges, &c. JNO. DOE & RICHARD ROE.

Before which said fourth Monday of December, the said plea was adjourned by act of Congress until the second Monday of April then next ensuing.

At which said second Monday of April, in the year one thousand eight hundred and twenty-one, being the day of the return of the aforegoing writ, comes into the circuit court here the said President and Directors of the Union Bank of Georgetown, by their attorneys aforesaid; and the Marshal of the district aforesaid, to whom the aforegoing writ was in form aforesaid directed, makes return thereof to the court here, thus endorsed, to wit: "Cepi, TENCH RINGGOLD, *Marshal.*" And the said John Goszler being called, appears here in court by Augustus Taney, Esquire, his attorney; and thereupon, on motion of the said plaintiffs, by their attorneys aforesaid, it is ruled by the court here that the said John Gozler give special bail in

the plea aforesaid, or, in default thereof, be committed to the custody of the Marshal of the district aforesaid.

Whereupon, a certain John Lyons, present here in court, in his proper person, and with the consent of the said plaintiffs, by their attorneys aforesaid, undertakes for the said John Gozler, that, in case the said plaintiffs shall recover judgment against the said John Goszler, in the plea aforesaid, or that he, the said John Goszler, shall be therein legally convict, that then the said John Goszler shall pay the condemnation of the court thereupon, or render his body to the custody of the Marshal of the district aforesaid in satisfaction thereof, or that he, the said John Lyons, will do the same for him; thereupon, on motion of the said bank, by its attorneys aforesaid, it is ruled by the court here that the said John Gozler answer to the declaration of the said bank, in the plea aforesaid, or judgment by the court here will be entered against him in default thereof; and the said John, by his attorney aforesaid, defends the force and injury when, and so forth, and prays leave of the court here to imparle until the first Monday of October next, and then to answer to the declaration aforesaid of the said bank, in the plea aforesaid, and to him it is granted; the same day is given to the said bank also.

At which said first Monday of October, in the year one thousand eight hundred and twenty-one, to which said day the said John had leave to imparle, and then to answer to the declaration aforesaid of the said bank, in the plea aforesaid, comes again into the circuit court here as well the said plaintiffs, by their attorneys aforesaid, as the said John, by his attorney aforesaid; and the said John, by his attorney aforesaid, defends the force and injury, when, and so forth, and saith that he did not assume upon himself, in manner and form as the aforesaid bank above against him hath complained; and of this he puts himself upon the country, and the said bank in like manner, &c. Therefore let a jury thereon appear before the court here on the second Monday of April next, by whom, &c., and who neither, &c., to recognize, &c.; because as well, &c., the same day is given to the said parties, then and there, &c.

And at said second Monday of April, in the year of our Lord one thousand eight hundred and twenty-two, come again into the circuit court here as well the said plaintiffs, by their attorneys aforesaid, as the said John Goszler, by W. Jones, Esquire, and his attorney aforesaid: whereupon, further process of and upon the premises aforesaid, between the parties aforesaid, by consent of the said parties, by their attorneys aforesaid, is continued until the first Monday of October next.

And now here, to wit, the said first Monday of October, in the year one thousand eight hundred and twenty-two, come again into the circuit court here as well the said plaintiffs, by their attorneys aforesaid, as the said John, by his attorney aforesaid; whereupon, for trying the issue aforesaid, by consent of the parties aforesaid, it is ordered by the court here that twelve persons from the pannel of petit jurors returned to the court here by the Marshal of the district aforesaid, be drawn by ballot according to law, who being drawn and called, come, to wit: Richard Lay, William Talbott, James Kennedy, Peter Faulkner, Henry Gaither, William Thomson, William Rhoades, Elie Cross, Jesse Brown, Jesse M. Semmes, Henry Smith, and Peter Magruder, who being empannelled and sworn to say the truth in the premises, upon their oath do say, that the said John Goszler did assume upon himself, in manner and form as the aforesaid President and

Directors of the Union Bank of Georgetown within against him have complained; and they assess the damages of the said President and Directors of the Union Bank of Georgetown, sustained by occasion of the non-performance of the promise and assumption aforesaid, to the sum of seven hundred and twenty-five dollars, current money, with interest from the 24th day of October, one thousand eight hundred and twenty; which said verdict was taken subject to the opinion of the court upon the following statement filed in court here by the attorneys of the parties aforesaid, to wit:

UNION BANK OF GEORGETOWN *vs.* JOHN GOSZLER.

On the trial of the issue above joined, the plaintiffs, to support the issue on their part above joined, produced and read in evidence to the jury the note in the declaration mentioned (the handwriting of the parties being admitted) in these words and figures:

$ 725. GEORGETOWN, *August* 22, 1820.

Sixty days after date we jointly and severally promise to pay the President and Directors of the Union Bank of Georgetown, or order, at their bank, seven hundred and twenty-five dollars, for value received.

VINCENT KING,
WM. MORGAN,
JOHN GOZLER.

Credit first drawer,
J. G.

Whereupon the defendant proved that, on the day of March, 1818, a promissory note was drawn by the said Vincent King (one of the drawers of the said note produced in evidence as aforesaid) for one thousand dollars, payable 60 days after date to the said William Morgan, another of the said drawers, or order, and endorsed in blank by said Morgan and the defendant, with a memorandum in writing at the foot of the said note, signed by the said defendant as last endorser, in these words, "Credit the drawer;" that the said note was so drawn and endorsed for the sole purpose of being offered by said King for discount in said bank for his own accommodation; that, according to the general usage of trade in said bank and in other banks, and among other merchants and traders, the said memorandum, at the foot of the note so signed by the last endorser as aforesaid, was always understood to import that such note was drawn and intended to be offered for discount in bank for the accommodation of the drawer; and that the proceeds of such note, when discounted, were to be passed to the credit of the drawer, and not to the credit of the endorsers, or either of them; that the said note, so dated in March, 1818, was so drawn and endorsed as aforesaid for the sole purpose of being so discounted in the Union Bank, for the accommodation of said King, and was so discounted upon his application, and at his instance and request; and the nett proceeds, being the amount of the said note after deducting therefrom a discount equivalent to interest computed for the space of 64 days, thereupon passed to the credit of said King in said bank; that the said note fell due on the 19th day of May, 1818, (that being the last day of grace,) and was then renewed and replaced with another note similarly drawn and endorsed, for the purpose

of continuing such discount, for the like accommodation of the said King; and such discounts were, in like manner, continued to said King upon successive notes so drawn and endorsed, from time to time, as each note successively became payable, from that time to the date of the note now in suit; except that said bank, at sundry intervening renewals and continuations of such discounts, had called for certain curtails of the same, which had, from time to time, reduced the amounts of such notes and discounts, respectively, to the several amounts of the notes and discounts charged and credited in the bank account A, hereto annexed as a part of this case; that, when the said discount was about to be continued for the last time, in August, 1820, the said bank changed the form of such accommodation notes to the form of the one now in suit, making the drawer and endorsers all joint and several drawers, with a memorandum at foot, signed by the last drawer, as in the said note now in suit; which, according to such bank usage and custom of trade as aforesaid, was always understood to import that the said note was so drawn to enable the drawer, to whose credit it was to pass by said memorandum, to get an accommodation on the same in bank by way of discount; that the said last mentioned note was accordingly so drawn, offered and discounted at said bank, to replace the preceding note drawn by said King, and endorsed as aforesaid, and by way of continuing to him the said accommodation and discount as aforesaid; that the difference between each note charged in said account, and the corresponding opposite credit of discount, respectively, shews the amount of discount charged by, and paid to, said bank upon each of the said notes respectively, as the said discount and accommodation were continued to said King upon each succeeding note given by way of renewal, when the last preceding note became due and payable as aforesaid, except as to the first note charged on the 19th May, 1818, the amount of discount charged on which does not appear in said account; that all the said notes were made payable in 60 days after their respective dates, and, according to such bank usage and custom of trade, became due and demandable, and were actually demanded, on the third day (commonly called the last of grace) after the expiration of 60 days from the date of each; and the several discounts credited in said account are the nett proceeds of the several notes respectively charged in said account, after deducting from the same the discounts respectively charged by, and paid to, said bank, upon every renewal and continuation of said discounts as aforesaid; all which discounts were paid by the several deposites charged in said account, and which discounts were always deducted in the first instance: that each of said renewed notes bore date and was discounted on the last day of grace of its immediate predecessor; and the nett proceed of the same, on the same day, passed to credit of the drawer against such preceding note then charged up.

And the plaintiffs further proved, that, at the time of discounting the note for which the suit was brought, and the other notes mentioned in the account filed in this case, it was not understood between the plaintiffs and the party for whom the said discounts were made, that, by the terms of the accommodation given to the party by such discounts, he was to be charged, and was to pay more than the legal interest, at the rate of six per centum per annum, for the time he was to have the use of the money, but that he should pay according to the customary mode of charging discounts and interest on such accommodations in said bank; and that there was no agreement or understanding to pay more than such interest, at the rate aforesaid,

nor any distinct agreement about interest, nor any intention on the part of the plaintiffs to reserve or take more than legal interest, any further than to take sixty-four days' interest upon the discount of each note, for the reason and pursuant to the usage hereafter mentioned: and that the borrowers on this, and on all other occasions, (as the bank conceived and contended,) had the use of the money, according to the usage and practice of the bank, early in the morning, as soon as the bank opened, on the day the notes bore date, and had, from that time till the last moment of the last day of grace, the use of said moneys so loaned, not being bound to pay it till then; and that the practice and usage of the bank was therefore to take out sixty-four days' interest on the amount of such loan, believing they had a right to do so; because the bank conceived and contended that the borrower had the use of the said money for sixty-four days, as above stated, and that this was always the usage of the bank, or always intended so to be from its establishment; and was also the usage of every other bank in Georgetown and Washington, except the Bank of Columbia; and was well known to all the dealers of said banks; and this defendant, and the other parties to said note, were such dealers, at the time of giving said notes, and long before, at the bank of the plaintiffs; that no part of the money discounted upon any of the said renewed notes was drawn from the bank, but was placed to the credit of said King against the preceding note charged against him, all on the day the last note became payable. That sometimes, in making such discounts, it would happen that the notes were offered for discount, bearing date on Monday, on the evening of which day the directors met to make discounts; and, in all such cases, it was the usage of the bank to charge but sixty-three days' interest, because the borrower, in such cases, was considered as not having the use of the money till the next morning; that is, the morning after the date of the note; and so had the use of the money only for sixty-three days. But the variations and inequalities in the rate of discount charged in said account do not arise from that circumstance; the note now in suit, and all its said predecessors, having been dated on the Tuesday, the day after the directors met and passed the discount; and each and every of said renewed notes having been dated on the last day of grace of its immediate predecessor.

It is agreed that the aforegoing statement is to be considered as a case stated; and the verdict of the jury to be subject to the opinion of the court thereon; and if the law on such case stated be for plaintiffs, judgment to be rendered for plaintiffs on the verdict: otherwise for defendant.

F. S. KEY, *for plaintiffs.*
W. JONES, *for defendant.*

Whereupon, all and singular the premises being by the court here seen, heard, and fully understood, and mature deliberation thereupon had, it appears to the court here that the said plaintiffs are entitled to recover upon the above statement, as stated for their opinion.

Therefore, it is considered by the court here that the aforesaid President and Directors of the Union Bank of Georgetown recover against the said John Gossler as well the sum of seven hundred and twenty-five dollars, with interest from the twenty-fourth day of October, in the year of our Lord one thousand eight hundred and twenty, his damages aforesaid, by the jurors aforesaid, in form aforesaid, assessed to be sustained by occasion of the

of continuing such discount, for the like accommodation of the said King; and such discounts were, in like manner, continued to said King upon successive notes so drawn and endorsed, from time to time, as each note successively became payable, from that time to the date of the note now in suit; except that said bank, at sundry intervening renewals and continuations of such discounts, had called for certain curtails of the same, which had, from time to time, reduced the amounts of such notes and discounts, respectively, to the several amounts of the notes and discounts charged and credited in the bank account A, hereto annexed as a part of this case; that, when the said discount was about to be continued for the last time, in August, 1820, the said bank changed the form of such accommodation notes to the form of the one now in suit, making the drawer and endorsers all joint and several drawers, with a memorandum at foot, signed by the last drawer, as in the said note now in suit; which, according to such bank usage and custom of trade as aforesaid, was always understood to import that the said note was so drawn to enable the drawer, to whose credit it was to pass by said memorandum, to get an accommodation on the same in bank by way of discount; that the said last mentioned note was accordingly so drawn, offered and discounted at said bank, to replace the preceding note drawn by said King, and endorsed as aforesaid, and by way of continuing to him the said accommodation and discount as aforesaid; that the difference between each note charged in said account, and the corresponding opposite credit of discount, respectively, shews the amount of discount charged by, and paid to, said bank upon each of the said notes respectively, as the said discount and accommodation were continued to said King upon each succeeding note given by way of renewal, when the last preceding note became due and payable as aforesaid, except as to the first note charged on the 19th May, 1818, the amount of discount charged on which does not appear in said account; that all the said notes were made payable in 60 days after their respective dates, and, according to such bank usage and custom of trade, became due and demandable, and were actually demanded, on the third day (commonly called the last day of grace) after the expiration of 60 days from the date of each; and the several discounts credited in said account are the nett proceeds of the several notes respectively charged in said account, after deducting from the same the discounts respectively charged by, and paid to, said bank, upon every renewal and continuation of said discounts as aforesaid; all which discounts were paid by the several deposites charged in said account, and which discounts were always deducted in the first instance: that each of said renewed notes bore date and was discounted on the last day of grace of its immediate predecessor; and the nett proceed of the same, on the same day, passed to credit of the drawer against such preceding note then charged up.

And the plaintiffs further proved, that, at the time of discounting the note for which the suit was brought, and the other notes mentioned in the account filed in this case, it was not understood between the plaintiffs and the party for whom the said discounts were made, that, by the terms of the accommodation given to the party by such discounts, he was to be charged, and was to pay more than the legal interest, at the rate of six per centum per annum, for the time he was to have the use of the money, but that he should pay according to the customary mode of charging discounts and interest on such accommodations in said bank; and that there was no agreement or understanding to pay more than such interest, at the rate aforesaid,

nor any distinct agreement about interest, nor any intention on the part of the plaintiffs to reserve or take more than legal interest, any further than to take sixty-four days' interest upon the discount of each note, for the reason and pursuant to the usage hereafter mentioned: and that the borrowers on this, and on all other occasions, (as the bank conceived and contended,) had the use of the money, according to the usage and practice of the bank, early in the morning, as soon as the bank opened, on the day the notes bore date, and had, from that time till the last moment of the last day of grace, the use of said moneys so loaned, not being bound to pay it till then; and that the practice and usage of the bank was therefore to take out sixty-four days' interest on the amount of such loan, believing they had a right to do so; because the bank conceived and contended that the borrower had the use of the said money for sixty-four days, as above stated, and that this was always the usage of the bank, or always intended so to be from its establishment; and was also the usage of every other bank in Georgetown and Washington, except the Bank of Columbia; and was well known to all the dealers of said banks; and this defendant, and the other parties to said note, were such dealers, at the time of giving said notes, and long before, at the bank of the plaintiffs; that no part of the money discounted upon any of the said renewed notes was drawn from the bank, but was placed to the credit of said King against the preceding note charged against him, all on the day the last note became payable. That sometimes, in making such discounts, it would happen that the notes were offered for discount, bearing date on Monday, on the evening of which day the directors met to make discounts; and, in all such cases, it was the usage of the bank to charge but sixty-three days' interest, because the borrower, in such cases, was considered as not having the use of the money till the next morning; that is, the morning after the date of the note; and so had the use of the money only for sixty-three days. But the variations and inequalities in the rate of discount charged in said account do not arise from that circumstance; the note now in suit, and all its said predecessors, having been dated on the Tuesday, the day after the directors met and passed the discount; and each and every of said renewed notes having been dated on the last day of grace of its immediate predecessor.

It is agreed that the aforegoing statement is to be considered as a case stated; and the verdict of the jury to be subject to the opinion of the court thereon; and if the law on such case stated be for plaintiffs, judgment to be rendered for plaintiffs on the verdict; otherwise for defendant.

F. S. KEY, *for plaintiffs.*
W. JONES, *for defendant.*

Whereupon, all and singular the premises being by the court here seen, heard, and fully understood, and mature deliberation thereupon had, it appears to the court here that the said plaintiffs are entitled to recover upon the above statement, as stated for their opinion.

Therefore, it is considered by the court here that the aforesaid President and Directors of the Union Bank of Georgetown recover against the said John Goszler as well the sum of seven hundred and twenty-five dollars, with interest from the twenty-fourth day of October, in the year of our Lord one thousand eight hundred and twenty, his damages aforesaid, by the jurors aforesaid, in form aforesaid, assessed to be sustained by occasion of the

the same day, passed to the credit of said King in account; which credit was countervailed by charging him, in the same account, and at the same time, with the next preceding note due on that day: from which your petitioner and his counsel conceived it to be clearly made out, that the said bank had gained two days', or at least one day's interest at every successive renewal of each note, and twelve days', or at least six days' interest in each year, over and above the legal rate of interest; and accordingly, these facts being all stated in a case agreed, your petitioner, as advised by learned counsel, took defence upon the statute of usury: but the court overruled his said defence, upon the ground of some distinction between the legal effect of a *loan* and a *discount*. All which further appears by the said record. And your petitioner further shews, that the said decision of the circuit court involves questions of law of such extensive interest and operation as to render the final decision of them in the Supreme Court desirable to the whole community; not only to the numerous class of persons who either obtain accommodations for themselves, or lend their names to their friends, but to the banks and the numerous share-holders in the same; in short, that the question is of vital interest and importance to the whole system of commercial and bank finance in the country, and has so been viewed and treated by the great community of banks, including the Bank of the United States, who have retained a numerous and powerful bar of counsel to be in readiness to meet the question when and wheresoever it may arise.

And your petitioner, by way of assignment of errors in the judgment and proceedings aforesaid, shews, that the accommodation accorded by the said bank to the said King, by way of a discount upon accommodation-notes, successively renewed and continued as aforesaid, was essentially a loan; and the interest discounted and deducted from the amount of each note, as aforesaid, was, in the nature of interest, reserved and taken for the loan of money—there being no solid or legal ground for the distinction relied upon by the circuit court, between such a transaction as that in question and a *loan;* further, that each successive renewal and discount of the said notes, for the purpose of continuing the said accommodation to the said King, was essentially a forbearance or giving day of payment of a debt; and the interest so discounted and deducted from each note as aforesaid, was, in the nature of interest, reserved and taken for such forbearance and giving day of payment; and inasmuch as the interest, so reserved and taken, exceeds the legal rate of interest, that the transaction falls under both of the aforementioned predicaments of the statute against usury; and therefore, that the circuit court erred in giving judgment for the plaintiffs upon the case stated in the said record, but should have given judgment thereupon for the defendant.

Wherefore your petitioner prays that an order may be directed to the clerk of the said circuit court for the issuing of a writ of error in the said case, pursuant to the provisions of the act of Congress, passed April 2, 1816, for limiting the right of appeal from the said circuit court.

All which is humbly and respectfully submitted, &c. &c.

W. JONES, *for petitioner.*

To the clerk of the circuit court of the District of Columbia for the county of Washington:

Whereas John Goszler, by his petition to the Chief Justice and Associate Justices of the Supreme Court of the United States, hath assigned errors in

a certain judgment recovered in the said circuit court by the President and Directors of the Union Bank of Georgetown against the said petitioner, the record and process of which judgment is annexed to the said petition; and whereas it appears to me that such errors involve questions of law of such extensive interest and operation as to render the final decision of them by the Supreme Court desirable; now, you are hereby required and directed to issue a writ of error in the said case, in the usual form, upon the said petitioner's filing in your office a bond in the penalty of fifteen hundred dollars, with a condition in the usual form, and security to be approved by one of the judges of the said Circuit Court, or by one of the justices of this court.

Given under my hand, this twentieth day of February, 1823.

J. MARSHALL,
Chief Justice of the United States.

UNITED STATES OF AMERICA, ss.—*The President of the United States, to the Judges of the circuit court of the United States for the District of Columbia, in the county of Washington, greeting:*

Because in the record and proceedings, as also in the rendition of the judgment, of a plea which is in the said circuit court, before you or some of you, between the President and Directors of the Union Bank of Georgetown, plaintiffs, and John Goszler, defendant, a manifest error hath happened, to the great damage of the said John Goszler, as by his complaint appears; we being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington, on the first Monday of August next, in the said Supreme Court, to be then and there held, that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error, what of right, and according to the laws and custom of the United States, should be done.

Witness, the Honorable John Marshall, Chief Justice of the said Supreme Court, this first Monday of February, in the year of our Lord one thousand eight hundred and twenty-three.

[L. S.]

E. B. CALDWELL,
Clerk Supreme Court U. S.

In pursuance whereof, and according to the law in such case made and provided, a transcript of the record of proceedings of the judgment aforesaid, and all things thereunto relating, with the writ of error annexed, is hereby transmitted to the said Supreme Court.

In testimony whereof, I have hereto set my hand and affixed the seal of the said circuit court, this 27th day of February, 1823.

[L. S.]

WM. BRENT,
Clerk of Circuit Court, Wash'ton co.